

AMENDED IN ASSEMBLY MAY 25, 2012

AMENDED IN ASSEMBLY MAY 2, 2012

AMENDED IN ASSEMBLY APRIL 19, 2012

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2508

**Introduced by Assembly Member Bonilla
(Coauthor: Assembly Member Beall)**

February 24, 2012

An act to amend Section 10111 of, and to add Chapter 3.7 (commencing with Section 12140) to Part 2 of Division 2 of, of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2508, as amended, Bonilla. Public contracts: public health agencies.

Existing law requires a state agency to comply with specified procedures in awarding agency contracts.

This bill would, *with specified exceptions*, also prohibit a state agency authorized to contract for public benefit programs from contracting for call center services with a contractor or subcontractor unless that contractor or subcontractor certifies under penalty of perjury in his or her bid for the contract that the contract, and any subcontract performed under that contract, will be performed solely with workers employed in California. This bill would ~~authorize these agencies to waive this requirement, with the consent of the Controller, if certain conditions are met, and would require the Department of General Services to~~

~~include specified information relating to these waivers in an annual report, as provided specify that the Governor may waive these requirements during a declared emergency.~~ This bill would also require the contract to include a clause for termination for noncompliance and specified penalties, if the contractor or subcontractor performs the contract or the subcontract with workers outside of California during the life of the contract. ~~This bill would also specify that these provisions do not apply to an existing contract, as provided, or to a contract if the refusal to award that contract would violate the specific terms of federal trade treaties or bilateral or regional free trade agreements, as specified.~~

By requiring contractors and subcontractors to make certifications under penalty of perjury, this bill would create a new crime and thereby impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares the following:
- 2 (a) The federal and state economies are recovering from the
- 3 great recession and California still has a high unemployment rate.
- 4 Millions of Californians are not working or *are* working less than
- 5 they want and need full-time employment. California continues
- 6 to allow state public benefit call center contracts to be awarded to
- 7 contractors that perform the work outside the United States.
- 8 (b) By contracting and subcontracting outside of the country,
- 9 jobs are displaced in the United States and in California, and
- 10 taxpayer dollars are used to create jobs in foreign countries. State
- 11 tax revenues should be used to create jobs in the United States and
- 12 in California, especially when the taxpayer dollars are designated
- 13 for programs meant to create jobs and address problems associated
- 14 with joblessness.
- 15 ~~SEC. 2. Section 10111 of the Public Contract Code is amended~~
- 16 ~~to read:~~

1 ~~10111. Commencing January 1, 2007, the department shall~~
2 ~~make available a report on contracting activity containing the~~
3 ~~following information:~~

4 ~~(a) A listing of consulting services contracts that the state has~~
5 ~~entered into during the previous fiscal year. The listing shall~~
6 ~~include the following:~~

7 ~~(1) The name and identification number of each contractor.~~

8 ~~(2) The type of bidding entered into, the number of bidders,~~
9 ~~whether the low bidder was accepted, and if the low bidder was~~
10 ~~not accepted, an explanation of why another contractor was~~
11 ~~selected.~~

12 ~~(3) The amount of the contract price.~~

13 ~~(4) Whether the contract was a noncompetitive bid contract,~~
14 ~~and why the contract was a noncompetitive bid contract.~~

15 ~~(5) Justification for entering into each consulting services~~
16 ~~contract.~~

17 ~~(6) The purpose of the contract and the potential beneficiaries.~~

18 ~~(7) The date when the initial contract was signed, and the date~~
19 ~~when the work began and was completed.~~

20 ~~(b) The report shall also include a separate listing of consultant~~
21 ~~contracts completed during that fiscal year, with the same~~
22 ~~information specified in subdivision (a).~~

23 ~~(c) The information specified in subdivisions (a) and (b) shall~~
24 ~~also include a list of any contracts underway during that fiscal year~~
25 ~~on which any change was made regarding the following:~~

26 ~~(1) The completion date of the contract.~~

27 ~~(2) The amount of money to be received by the contractor, if it~~
28 ~~exceeds 3 percent of the original contract price.~~

29 ~~(3) The purpose of the contract or duties of the contractor. A~~
30 ~~brief explanation shall be given if the change in purpose is~~
31 ~~significant.~~

32 ~~(d) The level of participation, by agency, of disabled veteran~~
33 ~~business enterprises in statewide contracting and shall include~~
34 ~~dollar values of contract award for the following categories:~~

35 ~~(1) Construction.~~

36 ~~(2) Architectural, engineering, and other professional services.~~

37 ~~(3) Procurement of materials, supplies, and equipment.~~

38 ~~(4) Information technology procurements.~~

1 ~~Additionally, the report shall include a statistical summary~~
2 ~~detailing each awarding department's goal achievement and a~~
3 ~~statewide total of those goals.~~

4 ~~(e) The level of participation by small business in state~~
5 ~~contracting including:~~

6 ~~(1) Upon request, an up-to-date list of eligible small business~~
7 ~~bidders by general procurement and construction contract~~
8 ~~categories, noting company names and addresses and also noting~~
9 ~~which small businesses also qualify as microbusinesses.~~

10 ~~(2) By general procurement and construction contract categories,~~
11 ~~statistics comparing the small business and microbusiness contract~~
12 ~~participation dollars to the total state contract participation dollars.~~

13 ~~(3) By awarding department and general procurement and~~
14 ~~construction categories, statistics comparing the small business~~
15 ~~and microbusiness contract participation dollars to the total state~~
16 ~~contract participation dollars.~~

17 ~~(4) Any recommendations for changes in statutes or state policies~~
18 ~~to improve opportunities for small businesses and microbusinesses.~~

19 ~~(5) A statistical summary of small businesses and~~
20 ~~microbusinesses certified for state contracting by the number of~~
21 ~~employees at the business for each of the following categories:~~
22 ~~0-5, 26-50, 51-75, and 76-100.~~

23 ~~(6) To the extent feasible, beginning in the year 2008, the~~
24 ~~number of contracts awarded by the department in the categories~~
25 ~~specified in paragraph (5).~~

26 ~~(7) The number of contracts and dollar amounts awarded~~
27 ~~annually pursuant to Section 14838.5 of the Government Code to~~
28 ~~small businesses, microbusinesses, and disabled veteran business~~
29 ~~enterprises.~~

30 ~~(f) The level of participation of business enterprises, by race,~~
31 ~~ethnicity, and gender of owner, in contracts as identified in Section~~
32 ~~2051 of the Government Code, to the extent that the information~~
33 ~~has been voluntarily reported to the department. In addition, the~~
34 ~~report shall contain the levels of participation of business~~
35 ~~enterprises, by race, ethnicity, and gender of owner, for the~~
36 ~~following categories of contracts, to the extent that the information~~
37 ~~has been voluntarily reported to the department:~~

38 ~~(1) Construction.~~

39 ~~(2) Purchases of materials, supplies, or equipment.~~

40 ~~(3) Professional services.~~

1 ~~(g) In the years 2011 and 2012, any errors reported to the~~
2 ~~department by an awarding agency as required by Sections 10302,~~
3 ~~10344, and 12104.5, in the previous fiscal year.~~

4 ~~(h) Beginning in the year 2013, a list of in-state worker waivers~~
5 ~~requested by state agencies pursuant to subdivision (d) of Section~~
6 ~~12140, including an indication as to whether the Controller rejected~~
7 ~~the waiver request.~~

8 ~~SEC. 3.~~

9 ~~SEC. 2.~~ Chapter 3.7 (commencing with Section 12140) is added
10 to Part 2 of Division 2 of the Public Contract Code, to read:

11
12 CHAPTER 3.7. PROHIBITION OF THE OFFSHORING OF STATE
13 PUBLIC BENEFITS CONTRACTS
14

15 12140. (a) Notwithstanding any other law, any state agency
16 authorized to enter into contracts for public ~~benefits~~ *benefit*
17 programs shall not contract for call center services for those public
18 benefit programs with a contractor unless that contractor certifies
19 under penalty of perjury in his or her bid for the contract that the
20 contract, or any part thereof, and any subcontract performed under
21 that contract, will be performed solely with workers employed in
22 California.

23 (b) For purposes of this section:

24 (1) "Call center" means a building, facility, or operation where
25 customer or client services or assistance is provided by telephone,
26 fax, email, text, or Web-based interaction.

27 (2) "Public benefit programs" means California Work
28 Opportunity and Responsibility to Kids (CalWORKs), CalFresh,
29 Medi-Cal, Healthy Families, and the California Healthcare
30 Eligibility, Enrollment, and Retention System.

31 (c) The contract shall provide that in the event a contractor or
32 subcontractor performs the contract or the subcontract for call
33 center services with workers outside of California during the life
34 of the contract, the contract shall be terminated for noncompliance
35 and the contractor or subcontractor shall pay a penalty to the state
36 agency in an amount equal to the amount paid by the state agency
37 for the percentage of work that was performed with workers outside
38 of California.

39 ~~(d) (1) In the case of an emergency, a state agency may waive~~
40 ~~the requirements of subdivision (a) for a particular contract prior~~

1 to the notice inviting bids if that state agency submits a written
2 finding relative to the nature of the emergency and facts related
3 to the contract meeting the requirements of subparagraphs (A),
4 (B), and (C) to the Controller, and the Controller does not reject
5 that finding within 30 days of receipt. The term of the waiver shall
6 be for no longer than six months. The finding shall detail how the
7 contract is necessary to respond to an emergency, as determined
8 by the state agency, and that all of the following are true:

9 (A) The ability of the state agency to provide essential services
10 would be adversely affected if the contract is not performed.

11 (B) The public health, safety, and welfare would be endangered
12 if the contract is not performed.

13 (C) A contractor or subcontractor that has the ability to perform
14 the contract solely with workers within California is not
15 immediately available to perform the contract.

16 (2) In the case of an emergency, a state agency may waive the
17 requirements of subdivision (a) for a particular contract already
18 in force, for a period not to exceed one year per waiver, if that
19 state agency submits a written finding relative to the nature of the
20 emergency and facts related to the contract meeting the
21 requirements of subparagraphs (A), (B), and (C) to the Controller,
22 and the Controller does not reject that finding within 30 days of
23 receipt. The finding shall detail how the contract is necessary to
24 respond to an emergency and that all of the following are true:

25 (A) The ability of the state agency to provide essential services
26 would be adversely affected if the contract is not performed.

27 (B) The public health, safety, and welfare would be endangered
28 if the contract is not performed.

29 (C) A contractor or subcontractor that has the ability to perform
30 the contract solely with workers within California is not
31 immediately available to perform the contract.

32 (3) If a state agency seeks a waiver pursuant to paragraph (1)
33 or (2), the waiver shall include the facts the agency used to make
34 the findings in paragraph (1) or (2), including, but not limited to,
35 the estimated number of jobs affected and the estimated duration
36 of employment, and salaries of the noncompliant workers. Every
37 contract subject to the provisions of this section shall include
38 information on the conditions and the procedural requirements for
39 making a waiver request to the contracting state agency. The
40 contract shall also include the penalties conferred upon the

1 contractor pursuant to subdivision (c) and paragraph (5) for using
2 out-of-state workers to perform the state contract.

3 (4) (A) A state agency that seeks a waiver under paragraph (1)
4 or (2) shall, at the same time that the entity provides the written
5 finding to the Controller, post a copy of the written finding on the
6 agency's Internet Web site and provide written notice to the
7 Assembly Committee on Business, Professions, and Consumer
8 Protection, the Assembly Committee on Jobs, Economic
9 Development, and the Economy, the Assembly Committee on
10 Budget, the Senate Committee on Governmental Organization,
11 and the Senate Committee on Budget and Fiscal Review.

12 (B) The Controller shall annually provide the Department of
13 General Services with a list of waivers requested by state agencies
14 pursuant to paragraph (1) or (2) with an indication of whether the
15 Controller rejected the waiver. The Department of General Services
16 shall include this information in the annual report required in
17 Section 10111 of the Public Contract Code.

18 (5) If the Controller rejects a written finding while the contract
19 is being performed or after the contract has been performed, the
20 contractor or subcontractor shall pay a penalty to the state agency
21 in an amount equal to the amount paid by the state agency for the
22 percentage of work that was performed with workers outside of
23 California.

24 (d) *The requirements of subdivision (a) shall not apply if the*
25 *Governor waives those requirements pursuant to Section 8571 of*
26 *the Government Code.*

27 (e) This section shall not apply to a *the following*:

28 (1) A contract if the refusal to award that contract, on the basis
29 that the contractor or subcontractor does not certify under penalty
30 of perjury that the contract and any subcontract performed under
31 that contract will be performed solely with workers within
32 California, would violate the specific terms of the Agreement on
33 Government Procurement of the World Trade Organization or any
34 other bilateral or regional free trade agreement ~~that to which the~~
35 *State of California has consented to.*

36 (f) ~~This section shall not apply to a~~

37 (2) A contract or subcontract, currently in place, if it would
38 result in a violation of the terms of the contract, but upon expiration
39 of that contract, these provisions shall be added before a new
40 contract can be executed or renewed.

1 (3) *A contract for a public benefit program between a state*
2 *agency and a health care service plan or a specialized health care*
3 *service plan regulated by the Department of Managed Health*
4 *Care, and any subcontract performed under that contract, or a*
5 *disability insurer or specialized health insurer regulated by the*
6 *Department of Insurance, and any subcontract performed under*
7 *that contract.*

8 ~~SEC. 4.~~

9 SEC. 3. No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution because
11 the only costs that may be incurred by a local agency or school
12 district will be incurred because this act creates a new crime or
13 infraction, eliminates a crime or infraction, or changes the penalty
14 for a crime or infraction, within the meaning of Section 17556 of
15 the Government Code, or changes the definition of a crime within
16 the meaning of Section 6 of Article XIII B of the California
17 Constitution.